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# REQUEST FOR QUALIFICATIONS

## **I-75 from North of 13 Mile Road to North of Coolidge Highway Performance Based Tree Replacement Project**

*Construction Manager / General Contractor (CMGC)*

CS 63174; JN 204358

ISSUE DATE: September 8, 2020

**STATEMENT OF QUALIFICATIONS**  
**DUE DATE: October 6, 2020 at 4:00PM**



Original Issue September 8, 2020

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>1</b>
<b>SECTION 1: INTRODUCTION .....</b>	<b>1</b>
<b>SECTION 2: PROJECT BACKGROUND .....</b>	<b>1</b>
2.1 PROJECT INFORMATION .....	1
2.2 PROJECT MANAGER .....	2
2.3 PROJECT TEAM .....	3
2.4 PROJECT GOALS .....	3
2.5 ANTICIPATED PROJECT SCHEDULE (Subject to Change) .....	3
<b>SECTION 3: PROJECT SCOPE OF WORK .....</b>	<b>4</b>
3.1 DESIGN RESPONSIBILITY .....	4
3.2 PHASE 1 – PRE-CONSTRUCTION SERVICES .....	4
3.3 CONSTRUCTION SERVICES COST PROPOSAL .....	6
3.4 PHASE 2 – CONSTRUCTION SERVICES .....	8
<b>SECTION 4: TEAMING PARAMETERS .....</b>	<b>8</b>
2.1 ORGANIZATIONAL CONFLICTS OF INTEREST .....	8
2.2 TEAM CONTINUITY AND CHANGES TO ORGANIZATION STRUCTURE .....	9
2.3 EQUAL EMPLOYMENT OPPORTUNITY .....	9
2.4 DISADVANTAGED BUSINESS ENTERPRISES .....	9
<b>SECTION 5: STATEMENT OF QUALIFICATION REQUIREMENTS .....</b>	<b>10</b>
5.1 ACCEPTANCE OF EVALUATION PROCESS .....	10
5.2 CLARIFICATIONS AND INTERPRETATIONS .....	10
5.2.1 Answers To Questions .....	10
5.2.2 Clarifications Or Interpretations .....	10
5.2.3 Addenda .....	10
5.3 OBLIGATION OF PARTIES .....	10
5.3.1 Assumed Requirements .....	11
5.3.2 Cost Of Submission .....	11
5.3.3 Reimbursement .....	11
5.3.4 Award Of Contract .....	11
5.4 COMPLETENESS OF SOQ .....	11
5.4.1 Completeness .....	11
5.4.2 Compliance .....	12
5.4.3 Rejection .....	12
5.5 WITHDRAWAL OR MODIFICATION .....	12
5.6 OWNERSHIP OF SOQ's .....	12
5.7 VALIDITY PERIOD .....	12
5.8 SOQ SUBMITTAL INSTRUCTIONS AND FORMAT .....	12
5.8.1 Due Date, Time, And Location .....	12
5.8.2 SOQ Format .....	13
5.8.3 SOQ Submittal Quantities .....	13
<b>SECTION 6: STATEMENT OF QUALIFICATIONS CONTENT .....</b>	<b>13</b>
6.1 QUALITATIVE CRITERIA .....	13
6.2 FINANCIAL VIABILITY (Pass/Fail) .....	13
6.3 Form CMGC-001 (Pass/Fail) .....	14
6.4 Form CMGC-002 (Pass/Fail) .....	14
6.5 Form CMGC-003 (Pass/Fail) .....	14
6.6 Conflict of Interest Statement (Pass/Fail) .....	14

<b>SECTION 7: PRE-CONSTRUCTION SERVICES FEE &amp; TERMINATION .....</b>	<b>14</b>
7.1 PRE-CONSTRUCTION FEE.....	14
7.2 TERMINATION OF PRE-CONSTRUCTION SERVICES.....	16
<b>SECTION 8: EVALUATION PROCESS .....</b>	<b>16</b>
8.1 EVALUATION PROCESS .....	16
8.2 PASS / FAIL EVALUATION CRITERIA .....	18
8.3 QUALITATIVE EVALUATION CRITERIA .....	18
8.3.1 UNDERSTANDING OF SERVICE (15 POINTS).....	18
8.3.2 EXPERIENCE / PAST PERFORMANCE (20 POINTS) .....	19
8.3.3 WORK ZONE SAFETY (15 POINTS) .....	19
8.3.4 SCHEDULE MANAGEMENT (15 POINTS) .....	19
8.3.5 QUALIFICATIONS OF KEY STAFF (20 POINTS).....	19
8.3.6 INNOVATIONS (15 POINTS) .....	20
8.4 QUALITATIVE SCORE & SELECTION .....	20
8.5 INTERVIEWS (30 points).....	20
8.6 FINAL SCORE AND SELECTION.....	20
8.7 DEBRIEFING .....	20
<b>EXHIBIT A: CONFLICT OF INTEREST STATEMENT. ....</b>	<b>21</b>
<b>EXHIBIT B: FORMS: CMGC 001, CMGC 002, CMGC 003 .....</b>	<b>22</b>
CMGC-001 SUBMITTER INFORMATION .....	23
CMGC-002 STATEMENT OF QUALIFICATIONS CHECKLIST .....	24
CMGC-003 ACKNOWLEDGMENT OF RECEIPT OF ADDENDA .....	25
<b>EXHIBIT C: EXAMPLE PRECONSTRUCTION CONTRACT.....</b>	<b>27</b>



## **SECTION 1: INTRODUCTION**

The Michigan Department of Transportation (MDOT), Metro Region, is accepting Statements of Qualifications (SOQ's) from entities (Submitters) interested in providing Construction Manager / General Contractor (CMGC) services for a Tree replacement project which includes three years of watering and cultivation followed by a two year maintenance period which will be based on performance on I-75 from North of 13 Mile Road to North of Coolidge Highway.

MDOT staff, with the assistance of a landscape architecture consultant, is in the process of preparing design plans for the replacement of trees within the project segment. The design phase is currently 20% complete. MDOT will procure a separate Independent Cost Estimator (ICE), with whom MDOT and the CMGC will collaborate with throughout the design phase of the Project. The CMGC is expected to perform the pre-construction services outlined in Section 3.2, and be responsible for the final construction and maintenance of the project if an agreement on price is reached.

As the design nears completion, (approximately 70% to 90% final plans) the selected CMGC will prepare and submit a Construction Services Cost Proposal (CSCP) in accordance with Section 3.3 in order to begin final price negotiations. Subject to a successful price negotiation with MDOT, the CMGC will be awarded the construction portion of the project and responsible to complete the construction while directly performing at least 40 percent of the work. The remaining portion of work may be completed by subcontractors. If an acceptable Construction Service Cost Proposal cannot be reached, the project will be advertised following MDOT's normal design-bid-build process.

By submitting a Statement of Qualifications (SOQ), Submitters agree to be bound by the requirements outlined in this Request for Qualifications (RFQ), be held to any commitments made in a submitted SOQ and shall satisfy all requirements developed during the design phase of the Project. Failure of the Submitter to meet these requirements may result in rejection of the CMGC process, and the Project may be advertised following MDOT's normal design-bid-build process. The Project will be funded with state and federal-aid dollars, thereby requiring the Submitter to adhere to all pertinent federal, state, and local requirements.

## **SECTION 2: PROJECT BACKGROUND**

### **2.1 PROJECT INFORMATION**

Control Section: 63174

Job Number: 204358

Replacement of Trees which includes three years of watering and cultivation followed by a two year term maintenance period which will be based on performance is in the second segment of the I-75 Modernization project. The number of trees to be replaced within the project limits is currently estimated to be 6,548. The trees to be replaced are expected to be the largest, sustainable trees available based on soil conditions, and are required to be planed back into their original locations. If they are unable to be planted back into their original locations, they must be planted adjacent to

or in close proximity to the area in which they were removed, all within the project limits. The planting locations will be limited by the amount of room available within existing ROW to place trees without impacting clear zone, drainage, sight distance, and maintenance areas.

The goal of the project is to replace trees that were removed and plant back new trees that are the largest possible that will sustain and flourish with a high level of long-term viability.

Performance requirements for the tree plantings will be developed with assistance from the CMGC. The performance requirements will include long term inspection and maintenance of the plantings installed as part of the contract. Tree plantings installed as part of the contract will be expected to be maintained at the levels developed in the contract documents and replaced as necessary during the life of the contract. The length of the performance contract will be three years, and up to an additional two more years based on performance. Costs for maintenance periods will need to be defined individually by year, as it is expected that maintenance costs will decrease over time. Therefore, a separate line item cost will be proposed for the installation and one for each year of maintenance thereafter, up to the fifth year. If additional years are added, an amended contract will be issued with additional compensation for the maintenance activities.

The purpose of utilizing this innovative delivery method is to benefit the public and Project by engaging the CMGC contractor early during the design for species selection and development of the tree replacements to ensure the highest chance of success and the most cost effective ways for long term viability. Including the CMGC contractor in the plant, tree and shrub species selection and planting location process with the desired long term plant retainage requirements, will provide the best opportunity for a successful tree replacement project that meets the expectations of MDOT and the stakeholders.

Based on the scope of the Project and the preliminary estimate, the Contractor (CMGC) must meet the following prequalification categories:

- 3300 H (Landscaping)

Anyone wishing to perform construction work on MDOT projects must be prequalified. All applications for contractors to become prequalified will be due by 9/10/2020

Information and forms to become construction prequalified are located at:  
[http://www.michigan.gov/mdot/0,4616,7-151-9625\\_21539\\_21545---,00.html](http://www.michigan.gov/mdot/0,4616,7-151-9625_21539_21545---,00.html) .

A sample preconstruction contract is located in Exhibit C

## 2.2 PROJECT MANAGER

Project Manager:  
Spiro Kotsonis  
Macomb TSC  
26170 21 Mile Road  
Chesterfield Twp, MI 48051  
Phone: 248-361-0543

E-Mail: [kotsoniss@michigan.gov](mailto:kotsoniss@michigan.gov)

Innovative Contracting Project Manager:

Mark Dubay

Innovative Contracting Unit

425 W. Ottawa Street

P.O. Box 30050

Phone: 517-331-5648

E-Mail: [DubayM@michigan.gov](mailto:DubayM@michigan.gov)

All questions must be e-mailed to the Project Manager and Innovative Contracting Project Manager.

The available Project information is listed below and will be placed in Projectwise. Access to the folder can be obtained by contacting the MDOT Project Manager and Innovative Contracting Project Manager.

1. Current Released for Construction (RFC) Plans from the I-75 Segment 2 Design-Build Reconstruction Project
2. Existing survey information Location information for tree removals

### 2.3 PROJECT TEAM

The Project Team, as referenced herein, is composed of MDOT staff, Rowe PSC, the ICE, the CMGC, potentially key subcontractors to the CMGC, and any additional Project stakeholders.

### 2.4 PROJECT GOALS

The following project goals are expected to be incorporated into the construction phase of the project. Failure to address or determine the means to accomplish these goals during the pre-construction phase may lead to the Project being advertised by MDOT's traditional design-bid-build process instead of having the project constructed by the selected CMGC.

- Ensure commitments made in the NEPA document are followed.
- Complete all plantings prior to 11/15/2022
- Complete the project/maintenance on 11/15/2027

### 2.5 ANTICIPATED PROJECT SCHEDULE (Subject to Change)

Post RFQ	9/08/2020
Due Date for RFQ Questions and Clarifications	9/29/2020
SOQ Due	10/6/2020 4:00 PM EST
Anticipated Notification of Selection of CMGC	11/1/2020
Pre-Construction Services Price Proposal Meeting	11/8/2020
Pre-Construction Services Fee Negotiation	11/22/2020
Notice to Proceed/Award of Preconstruction Phase	1/15/2021
Development of Plans and Specifications	8/1/2020-3/30/2021

Submit and Negotiate Final CSCP	April 2021
Construction Letting (if no final price agreement)	May 2021
Begin Construction	10/1/2021
Complete Construction	11/15/2027

\* Start date will be determined during the design phase of the project in order to meet the required completion dates.

### **SECTION 3: PROJECT SCOPE OF WORK**

#### **3.1 DESIGN RESPONSIBILITY**

The CMGC is being selected early in the project to join the Project Team. The CMGC will not be expected to be the designer of record for the project, but is expected to provide the Project Team with construction expertise and technical experience to assist in project decision-making, ensure the technical challenges are addressed, and provide input on items affecting construction costs, schedule, constructability, maintenance and market conditions. MDOT has hired Rowe PSC to perform the design work.

#### **3.2 PHASE 1 – PRE-CONSTRUCTION SERVICES**

The CMGC shall consult with the Project Team during the design phase in order to develop, implement, and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all. The Pre-Construction Services Fee is described in Section 7.1. The CMGC shall deliver pre-construction services by performing the following:

- Review and analyze in-progress design, details, performance requirements, and specifications developed by MDOT's design consultant and provide input. MDOT is looking for the CMGC's input on selecting the appropriate design for the tree replacements and developing performance measures for inspection and maintenance.
- Provide input on species, sizing, and location of tree replacements which will provide the highest potential for long term viability and meet the needs of MDOT and the stakeholders.
- Identify potential construction and constructability issues and risks for each to assist the Project Team in selecting the appropriate design and performance measures for the Project.
- Provide recommendations and guidance on the appropriate plant species to be used, locations and maintenance considerations and offer suggestions with respect to the means and methods, materials, innovations, maintaining traffic concepts, and construction sequencing to improve efficiency, cost effectiveness, completeness or clarity, and sustainable landscaping.
- Review the project site with MDOT design and construction staff within 2 weeks of award of the preconstruction phase, and prior to the final plan review meeting.



- Provide input to the Project Team regarding current construction industry practices, labor market, and availability of tree stock.
- It is allowable to use subcontractors or design consultants to supplement pre-construction services in order to provide necessary expertise. The hours for the contractor's design consultant are expected to be limited. Critical or key subcontractor involvement is desired during the preconstruction phase.
- Notify the MDOT Project Manager, in writing, of all problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Assist the MDOT Project Manager and design team in resolving problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Provide construction estimates, and supporting documentation if requested, when the plans are 30 percent complete, 60 percent complete and at the final cost negotiation stage. Unless otherwise approved by MDOT, the estimates will provide a unit price on standard MDOT pay items when applicable. If items of work cannot be estimate at these stages, provide a report of what the items are, the reasons a price cannot be estimated, and factors which will impact the item's pricing.
- Provide a written report of items MDOT should consider to improve any aspect of the project. At a minimum, the reports are to be submitted to the Project Manager after reviewing the 30% and 60% plans and specifications.
- Develop a preliminary Schedule of Values. At a minimum, the Schedule of Values must incorporate the below items unless otherwise approved by MDOT. If proposed, other payment mechanisms will be considered for approval.
  - Be described, in writing, with sufficient detail of the specific work included in the Schedule of Value Item and the limits of the Schedule of Value items so it can be accurately performed, tracked, invoiced and paid
  - Identification of when payment can be requested and payment can be paid
  - Identify the estimated dollar value associated with the Schedule of Value Item
  - Be able to be identified in a CPM Schedule
- Develop a baseline schedule during design which shall include a plan outlining:
  - Material procurement
  - Material delivery and handling
  - Production schedule to meet planting dates and priorities

The schedule will be used to analyze the procurement of the tree and the constructability of the project within the allotted project milestones. The software used for this will be discussed and approved by MDOT.
- Provide a final review and evaluation of the final plans and construction documents. Provide a written final review of the plans to demonstrate that the final plans, specifications, items of

work, and quantities have been reviewed and are reasonable and accurate to complete the project. The project superintendent must be involved in the review and evaluation of construction documents.

- Provide staff to assist in the preconstruction phase that will be active and have a lead role in the field during construction. The project superintendent or person responsible for overseeing the tree plantings should be involved throughout the CMGC process and included in the plan reviews, quantity reviews, etc.
- Work with MDOT to develop a communication plan within 7 days after the authorization to proceed with pre-construction services. The communication plan should clearly demonstrate how the CMGC and MDOT will work to convey information and establish a clear line of communication. The plan should also demonstrate how the CMGC and MDOT plan to include all parties with interest in the project, including, but not limited to the public, private utilities, and businesses. The plan will serve as the baseline for communication and be followed for both the pre-construction services and services during construction.
- The CMGC should expect to attend at all pre-construction coordination meetings with the Project Team. The expected meetings are as follows:
  - Project Kickoff meeting
  - Preliminary Plan Review Meeting
  - Preliminary Estimate Meeting
  - Final Plan Review Meeting
  - Approximately 3 design and estimate review meetings. The design review meetings may be conducted virtually.
  - Final Price Negotiation Meetings (minimum of two)

### 3.3 CONSTRUCTION SERVICES COST PROPOSAL

The CMGC shall submit a Construction Services Cost Proposal (CSCP) when the plans and construction documents are completed to a level sufficient to do so. All costs associated with developing and negotiating the CSCP is included in the Pre-Construction Service Fee. The CSCP can include four possible payment methods areas; a Guaranteed Maximum Price (GMP) for the initial plantings and the maintenance period, Adjustable Work, possibly Contingency items.

The GMP contains all items that will be paid based on an agreed upon unit price. The quantity of the work items included in the GMP may increase or decrease as the project is built, however, there will not be an increase in price to the GMP unless there is a scope change that significantly changes the scope of work. The GMP will not be exceeded without approval from the MDOT Project Manager, and only by a written work order. All costs or expenses in excess of the GMP shall be borne by the CMGC, unless adjusted by a previously approved written work order.

Adjustable Work includes items of work that are paid based on an agreed upon unit price and actual quantities placed during construction. This work shall be used to mitigate significant risks that cannot be accurately quantified during the design.

Contingency items, if used, are used to compensate the contractor for items that cannot accurately

be identified and quantified during the design phase.

The CMGC should expect several rounds of negotiations to arrive at an agreed upon Construction Services Cost Proposal. Negotiation meetings will primarily occur with staff from the CMGC, MDOT's Project Manager, MDOT Construction Engineer, MDOT Innovative Contracting Project Manager, and FHWA Area Engineer. Additional people, including the ICE, may be brought into the negotiations if it is agreeable by the CMGC and MDOT.

The CSCP shall include:

- Adjustable Work that may be paid based on an agreed upon unit price and actual quantities.
- Guaranteed Maximum Price (GMP) proposal, including all overhead and profit considered within specified pay items; as well as any subcontracted work. Description of all other inclusions to, or exclusions from, the GMP, including all assumptions and clarifications
- Possible contingency items.
- Lump Sum item costs (i.e.: mobilization, minor traffic devices, etc.) shall be detailed and include breakouts of what the costs include. These breakouts shall detail the costs for the prime and sub-contractors (i.e.: personnel established, expenses, bonding amounts, etc.)
- Construction schedule showing the proposed start and finished dates and any significant milestones.
- Clarification of understanding of the EPA/DEQ requirements including adherence to the soil erosion and sedimentation control plan requirements.
- Disadvantaged Business Enterprise (DBE) participation description, if participation is required.

The CMGC shall make available all cost and budget estimates, including bid documents and bidding software files to MDOT.

The CMGC is expected to solicit at least three bids on work that will be subcontracted.

If the MDOT Project Manager and the CMGC cannot agree on a Construction Services Cost Proposal, MDOT reserves the right to terminate the CMGC services without penalty or payment, except payment for Pre-Construction Services, and to proceed with traditional design-bid-build or other non-traditional delivery methods. Any information provided by the CMGC during the Pre-Construction phase will be used to develop the plans and specifications for the letting. Additional information such as meeting minutes, correspondence and other submittals provided during the development phase may be provided to bidders if a price cannot be reached.

### 3.4 PHASE 2 – CONSTRUCTION SERVICES

The CMGC shall, once the Construction Service Cost Proposal is approved:

- Construct, bid any remaining sub-contractor work, and manage all construction related contracts while meeting the DBE, if required, and other requirements.
- Execute the Quality Control Plan.
- Bond and insure the construction.
- Address and adhere to all federal, state, and local permitting and environmental requirements.
- Maintain a safe clean and well-organized work zone work site.
- Directly perform, with their own forces, the required percent of all construction work specified in Section 1, excluding any identified specialty items.
- Substantially complete the construction no later than 6/1/2022
- In the event that the contract is terminated after the award of the construction phase to the CMGC, the termination procedures in the 2012 MDOT Standard Specifications for Construction shall be followed.

## **SECTION 4: TEAMING PARAMETERS**

### 2.1 ORGANIZATIONAL CONFLICTS OF INTEREST

Organizational conflict of interest means that because of other activities or relationships with other persons or entities, an Organization:

- Is unable, or potentially unable, to render impartial assistance or advice to MDOT
- Is, or might be otherwise be, impaired in its objectivity in performing the contract work
- Has an unfair competitive advantage

Disclosure, evaluation, neutralization, and management of these conflicts, or the appearance of conflicts, is in the interest of the public, MDOT, and the consultant and construction communities.

Submitters are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflict of interest. Submitters shall state how their interest, activities, or relationships, or those of the chief executives, directors, key project personnel, or proposed Consultants may result, or could be viewed as, an organizational conflict of interest. Submit Conflict of Interest Statement (See Exhibit A) with the SOQ. It is recommended to contact the MDOT Project Manager immediately if a

conflict of interest is found, or appears to be present, so a course of action can be determined with minimal impact to a Submitter.

If an Organizational Conflict of Interest is determined to exist, MDOT may, at its sole discretion: offer the Submitter the opportunity to avoid or neutralize the Organizational Conflict of Interest; disqualify the Submitter from participation; or, if award has already occurred, declare the Submitter nonresponsive and award the contract to the next highest scoring Submitter, or cancel the contract. If the Submitter was aware of an Organizational Conflict of Interest prior to award of a contract and did not disclose the conflict, MDOT may terminate the contract for default.

### **2.2 TEAM CONTINUITY AND CHANGES TO ORGANIZATION STRUCTURE**

After submittal of a SOQ, Key Personnel may be not be removed, replaced, or added without the written approval of the MDOT Project Manager. It is expected that Key Personnel presented in the SOQ will be available for the duration of the project. Any changes to Key Personnel will require approval from the MDOT Project Manager and may result in termination of the contract.

To qualify for approval, the written request shall document that the proposed removal and replacement, or addition will be equal to or better qualified than the Key Personnel provided in the SOQ.

### **2.3 EQUAL EMPLOYMENT OPPORTUNITY**

The Submitter will be required to follow both the State of Michigan and Federal Equal Employment Opportunity (EEO) policies.

### **2.4 DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of MDOT that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, MDOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT) assisted contract because of sex, race, religion, or national origin.

MDOT has established a DBE program in accordance with regulations of the DOT, 49 CFR Part 26. It is the Submitter's responsibility to take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum possible opportunity to compete for and perform the contract. DBE requirements do not apply to Pre-Construction Services. Use of a DBE during Pre-Construction services does not apply towards required DBE Percentage.

**Pre-Construction Phase DBE Percentage: 0%**

**Construction Phase DBE Percentage and goals for minority and women will be determined during the pre-construction phase.**

## **SECTION 5: STATEMENT OF QUALIFICATION REQUIREMENTS**

### **5.1 ACCEPTANCE OF EVALUATION PROCESS**

A submission of a SOQ in response to this RFQ indicates the Submitter's acceptance of the evaluation process as detailed in Section 8 and the recognition that subjective judgments must be made by the Selection Committee during the evaluation process and in its final selection.

### **5.2 CLARIFICATIONS AND INTERPRETATIONS**

#### **5.2.1 Answers To Questions**

Submitters are required to direct all contact and questions regarding this RFQ to the Project Manager listed in this RFQ. All requests must be submitted by e-mail only, no later than five (5) business days prior to the Statement of Qualification Due Date. Responses will be publicly posted on the Project Web Site located at [https://www.michigan.gov/mdot/0,4616,7-151-9625\\_21539\\_53226-535091--,00.html](https://www.michigan.gov/mdot/0,4616,7-151-9625_21539_53226-535091--,00.html)

#### **5.2.2 Clarifications Or Interpretations**

Any clarifications or interpretations of this RFQ that affect or change its requirements will be issued by MDOT to the Project Web Site in the form of addenda, response to questions, or meeting notes. Interpretations or clarifications in any other form, including oral statements, will not be binding on MDOT and should not be relied upon in preparing the SOQ.

#### **5.2.3 Addenda**

All addenda issued by MDOT before the Statement of Qualification Due Date, are part of the RFQ, and all requirements shall be incorporating into the SOQ. The Submitter shall acknowledge receipt of each addendum by completing and submitting form CMGC-003.

### **5.3 OBLIGATION OF PARTIES**

The Submitter is solely responsible for ensuring that its SOQ is clear, correct, and consistent. MDOT reserves the right, at its sole discretion (but is not obligated), to:

- Investigate the qualifications of any Submitter.
- Seek or obtain data from any source related to the SOQ.
- Require confirmation of information furnished by a Submitter.
- Require additional information from a Submitter concerning its SOQ.
- Seek and receive clarifications to a SOQ.

- Require additional evidence of qualifications to perform the work.
- Modify the RFQ process.
- Waive minor deficiencies and irregularities in a SOQ.
- Reject any or all SOQ's.
- Cancel, modify, or withdraw the RFQ.
- Issue a new RFQ.

By submitting a SOQ, the Submitter understands and acknowledges the following:

### **5.3.1 Assumed Requirements**

The SOQ presented is based on assumed requirements of the proposed Project; and, that MDOT has made no written or oral representations that any such assumed requirements are accurate should a contract arise from the presented SOQ. Submitter is required to qualify all assumptions it makes.

### **5.3.2 Cost Of Submission**

All costs incurred by the Submitter as a result of the Submitter's efforts to participate in this selection process shall be at the sole risk and obligation of the Submitter.

### **5.3.3 Reimbursement**

MDOT will not provide compensation to the Submitter for any expenses incurred for the SOQ preparation.

### **5.3.4 Award Of Contract**

MDOT makes no guarantee that an award will be made as a result of this RFQ and reserves the right to accept or reject any or all SOQ's, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ or resulting contract when deemed to be in the Project's best interest. Representations made within the SOQ will be binding on responding firms, unless otherwise agreed to by MDOT in writing.

## **5.4 COMPLETENESS OF SOQ**

### **5.4.1 Completeness**

Each SOQ should be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of the RFQ.

Emphasis should be on completeness, clarity of content, responsiveness to requirements, and an understanding of the Project needs.

### **5.4.2 Compliance**

Failure to comply with the requirements contained in the RFQ may be subject for rejection of the SOQ.

### **5.4.3 Rejection**

Any SOQ that fails to meet the deadline or delivery requirements will be rejected and returned to the Submitter without having been opened, considered, or evaluated.

## **5.5 WITHDRAWAL OR MODIFICATION**

A SOQ may be withdrawn and resubmitted any time prior to the deadline for submitting the SOQ. No SOQ may be changed, amended, or modified after the deadline for submitting the SOQ. No SOQ may be withdrawn after the deadline for submitting the SOQ without a written request by the Submitter stating the reasons for withdrawing the SOQ and acceptance of the request by MDOT. All decisions are at the sole discretion of MDOT.

## **5.6 OWNERSHIP OF SOQ's**

SOQ's and any other information submitted by the Submitters shall become the property of MDOT. All or any part of the proposed Submitter innovation or method may be used or disclosed on this or future projects without obligation or compensation to the Submitter. All information supplied in an SOQ is subject to disclosure per the Freedom of Information Act.

## **5.7 VALIDITY PERIOD**

SOQ's are to be valid for MDOT's acceptance for a minimum of 49 days after the Statement of Qualification Due Date to allow time for evaluation and selection. A SOQ, if accepted, shall remain valid for the duration of the Contract.

## **5.8 SOQ SUBMITTAL INSTRUCTIONS AND FORMAT**

This section describes requirements that all Submitters must satisfy in SOQ. Failure to comply with any of the following by a Submitter may result in the rejection of the SOQ.

### **5.8.1 Due Date, Time, And Location**

SOQ's shall be delivered via email to the Project Manager and Innovative Contracting Project Manager listed in this RFQ. SOQ's are due by 4:00 P.M. EST, on the date identified as the Statement of Qualifications Due Date located on the Cover Sheet:

MDOT will not accept SOQ's submitted by facsimile.



### 5.8.2 SOQ Format

- **Language:** All information shall be in English.
- **Font:** All narrative text shall be a minimum of twelve (12) points in size and single spaced. The style and size of headings and figures are not prescribed.
- **Page Size:** With the exception of charts, exhibits, and other illustrative material, all information shall be 8.5-inch x 11-inch size. Charts, exhibits, and other illustrative material may be 11-inch x 17-inch size.
- **Page Margins:** Page margins shall be set at 0.75 inches minimum, not including headers or footers.
- **Table of Contents:** Include a Table of Contents that provides page number references.
- **Page Limit:** SOQ's shall not exceed 14 pages in length. Table of contents staff resumes and required forms are not included in page limits.
- **Dividers:** Section dividers or bookmarks are welcomed.
- **Graphics:** Graphics are allowed within established page limits. Text used on graphics must be legible and easily readable (minimum of 12-point font required). Graphics must not be used to convey information that could reasonably be presented in the body of the SOQ.

### 5.8.3 SOQ Submittal

Each Submitter must provide MDOT with the following:

- **One (1) Electronic copy of SOQ in PDF format**

The subject line of the email must state "(Contractor Name) SOQ: I-75 CMGC". Emails received after the time and date specified above will not be accepted.

## **SECTION 6: STATEMENT OF QUALIFICATIONS CONTENT**

### 6.1 QUALITATIVE CRITERIA

Section 8.3 contains the qualitative scoring criteria that will be used to score SOQ's. Submitters should clearly describe how they meet the needs of the department and criteria described in this section.

### 6.2 FINANCIAL VIABILITY (Pass/Fail)

The Submitter shall provide 1300 EZ with their SOQ for MDOT to verify their financial viability.

6.3 Form CMGC-001 (Pass/Fail)

6.4 Form CMGC-002 (Pass/Fail)

6.5 Form CMGC-003 (Pass/Fail)

6.6 Conflict of Interest Statement (Pass/Fail)

## **SECTION 7: PRE-CONSTRUCTION SERVICES FEE & TERMINATION**

### **7.1 PRE-CONSTRUCTION FEE**

The selected Submitter will be notified after the SOQ(s) have been reviewed and scored. The selected Submitter will be required to attend a scope verification meeting at a location determined by the MDOT PM and then submit a Pre-Construction Services Fee. This fee should include all direct costs, overhead and profit required to complete the scope of work outlined in Section 3.2. The Submitter should include a work plan and a description of their intended level of effort to review and assist in the development of plans and specifications during the preconstruction phase. Pre-Construction costs must be supported by a derivation of cost and back-up documentation. In general, two methods of documentation for the derivation of cost and back-up information are acceptable:

A. Hourly rates with an overhead rate, direct expenses, and fixed fee:

- The rates for each individual employee or classification included in the priced proposal must be submitted separately in a letter, certified by the company's financial officer.
- **Overhead rate option 1: Use an audited overhead rate.** Provide audit report for the company's Indirect Cost Rate Schedule for the most recent fiscal year to confirm the audited rate. If the audited overhead rate has been accepted by a state Department of Transportation other than MDOT, include the acceptance letter and the corresponding audit report for the company's indirect cost rate schedule for the most recent fiscal year.
- **Overhead rate option 2: Request to use MDOT's Safe Harbor Rate of 110%.** Eligibility and requirements are available on MDOT's website by clicking Doing Business/Vendor-Consultant Services, under the heading "Service Prequalification" or the following link:  
[https://www.michigan.gov/documents/mdot/Guidelines\\_for\\_the\\_Safe\\_Harbor\\_Overhead\\_Cost\\_Rate\\_435878\\_7.pdf](https://www.michigan.gov/documents/mdot/Guidelines_for_the_Safe_Harbor_Overhead_Cost_Rate_435878_7.pdf)
- The fixed fee for profit allowed for this project is 11.0% or less of the cost of direct labor and overhead.
- 

B. Loaded hourly rates and direct expenses:

- The loaded hourly rates will include costs for overhead and profit and must be supported by invoices to other clients.

- The invoices must be for similar Pre-Construction services that have been provided to other clients.
- The rates submitted to MDOT for each employee or classification must be supported by a minimum of three invoices.
- The rates submitted to MDOT for each employee or classification must not be higher than the corresponding rate on any of the three supporting invoices.
- The invoices must be stamped “approved” by the client, or other documentation must be provided to verify that the client paid the invoices.

MDOT reserves the right to negotiate the cost of the Pre-Construction Services Fee. If MDOT and the selected CMGC cannot agree on a price, hours of effort or number of employees providing these pre-construction services, MDOT will begin negotiations with the next highest-ranking Submitter from the SOQ scoring process.

Pre-Construction costs must comply with the Federal cost principles to be eligible for participation. In compliance with 23 CFR Section 635.507, if a CMGC provides an indirect cost rate, it must be in accordance with the Federal cost principles (as specified in 2 CFR part 200 subpart E) and a letter from an executive or financial officer of the company certifying it was prepared accordingly. Per 23 CFR Section 635.507, the certification of final indirect costs will read as follows:

*This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:*

1. *All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles in 2 CFR part 200 subpart E; and*
2. *This proposal does not include any cost which are expressly unallowable under application cost principles of 2 CFR part 200 subpart E.*

Compensation for this project shall be on a **milestone** basis. Compensation shall be divided into payments for the completion of a portion of the services (deliverables) as follows:

Preliminary Plan Comments and Estimate	40%
Pre-Final Plan Comments and Estimate	40%
<u>Construction Services Cost Proposal</u>	<u>20%</u>
Total Service	100%

The MDOT Project Manager may authorize payment if a milestone is delayed due to circumstances beyond the CMGC’s control.

All billings for services must be directed to the Department and follow the current guidelines.

Payment to the CMGC for services rendered shall not exceed the maximum lump sum amount unless an increase is approved in accordance with the contract with the CMGC.

## 7.2 TERMINATION OF PRE-CONSTRUCTION SERVICES

MDOT may terminate the contract with the CMGC if pre-construction services and coordination are not provided as negotiated and/or expected, or for convenience. A written 15 day notice will be sent to the CMGC before the services are completed. If the contract is terminated for any reason during the pre-construction phase, MDOT will determine if partial compensation for services rendered shall be paid to the CMGC.

## **SECTION 8: EVALUATION PROCESS**

### 8.1 EVALUATION PROCESS

SOQ's will initially be evaluated to determine if the Submitter has met the minimum requirements ("Pass") on all Pass / Fail evaluation factors. Pass / Fail evaluation factors are outline in Section 8.2. SOQ's will then be scored using the evaluation criteria. If a Submitter receives a "Fail" on any single Pass / Fail requirement, the SOQ will be rated as unacceptable and will not be scored on the evaluation criteria.

Once a SOQ has been determined to meet the minimum Pass / Fail criteria, MDOT will evaluate the SOQ relative to the MDOT Project Goals as described in Section 2.4 and scoring criteria as listed herein to determine the SOQ total score.

The qualitative evaluation score will be determined as follows:

- The MDOT Selection Committee will review each SOQ identifying significant and minor strengths and weaknesses of the Submitter.
- Strengths and weaknesses are defined as follows:
  - Strengths – That part of the SOQ which ultimately represents a benefit to the Project and is expected to increase the Submitter's ability to meet or exceed the Project Goals. A minor strength has a slight positive influence on the Submitter's ability to meet or exceed the Project Goals, while a significant strength has a considerable positive influence on the Submitter's ability to meet or exceed the Project Goals.
  - Weaknesses – That part of the SOQ which detracts from the Submitter's ability to meet the Project Goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Submitter's ability to meet the Project Goals, while a significant weakness has a considerable negative influence on the Submitter's ability to meet the Project Goals.

Based on the identified strengths and weaknesses, the Selection Committee will select an objective rating and percent in the identified range.

The following rating system will be used in determining the value for each Scoring Element of the

SOQ:

- **Excellent (81-100 % of points possible):** The SOQ is considered to significantly exceed the RFQ requirements / objectives in a beneficial way (providing advantages, benefits, or added value to the project) and provides a consistently outstanding level of competency. In order for the SOQ to meet the minimum criteria to be scored as Excellent, it must be determined to have more than one significant strength, additional minor strengths and no appreciable weaknesses. There is a high expectation that the team as proposed, would be successful in delivering the Project to the owner's satisfaction, and would most likely exceed all Project Goals.
- **Very Good (61-80 % of points possible):** The SOQ is considered to exceed the RFQ requirements / objectives in a beneficial way (providing advantages, benefits, or added value to the project) and offers a generally better than acceptable competency. In order for the SOQ to meet the minimum criteria for consideration to be scored as Very Good, it must be determined to have at least one significant strength, additional minor strengths and no significant weaknesses. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor weakness will result in a higher score. It is expected that the team as proposed, would be successful in delivering the Project to the owner's satisfaction, and will most likely meet and/or exceed all Project Goals.
- **Good (41-60 % of points possible):** The SOQ is considered to meet the RFQ requirements / objectives and offers an acceptable level of competency. In order for the SOQ to meet the minimum criteria for consideration to be scored as Good, it must be determined to have several strength(s), even though minor and/or significant weaknesses exist. The greater the significance of the strengths and/or the number of strengths, and the fewer the minor or significant weakness will result in a higher score. It is expected that the team as proposed, will be able to deliver the Project and meet the Project Goals.
- **Fair (21-40 % of points possible):** The SOQ is considered to contain several minor and/or significant weaknesses, some minor strengths and no significant strengths. The greater the strengths and fewer the minor or significant weakness will result in a higher score. It is expected that the team as proposed, should be able to deliver the Project but may not be able to meet some of the Project Goals.
- **Poor (0-20 % of points possible):** The SOQ is considered to contain significant weaknesses and no appreciable strengths. The SOQ demonstrates a low probability of meeting the RFQ requirements and may be determined to be nonresponsive. The fewer the minor or significant weakness will result in a higher score. It is unlikely that the team as proposed would be able to deliver the Project to the owner's satisfaction.

A score will be calculated for each Qualitative Evaluation Criteria by multiplying the percentage by the points possible.

MDOT reserves the right to conduct an independent investigation of any information, including prior experience, identified in the SOQ by contacting project references, assessing public information, contacting independent parties or other means. MDOT further reserves the right to request

additional information from a Submitter during the evaluation of the SOQ.

The Submitter selected to be the CMGC will be the firm whose verified experience and qualifications, as presented in response to this RFQ and reference checks, in the opinion of MDOT, as offering the most experience, expertise, and value to MDOT and the Project. The Selection Committee will review and evaluate the SOQ's throughout the selection process on the following general criteria. It should be noted that this is not a complete list, and should not be considered a "checklist", but rather a reference.

### 8.2 PASS / FAIL EVALUATION CRITERIA

- CMGC-001 Submitter Information
- CMGC-002 Statement of Qualifications Checklist
- CMGC-003 Addenda Acknowledgment
- Financial Viability (Form 1300EZ)
- Conflict of Interest Form (See Exhibit A)

### 8.3 QUALITATIVE EVALUATION CRITERIA

#### 8.3.1 UNDERSTANDING OF SERVICE (15 POINTS)

The Submitter shall provide an Executive Summary that includes their understanding of the project and its goals, how those goals will be met through the CMGC process, and a brief narrative describing why they are the "best qualified" to perform the services outlined in this RFQ. .

Submitters should describe their ability to provide pre-construction services and the advantages offered to MDOT and the Project from these services. Submitter should describe their ability to coordinate with MDOT to improve constructability and provide input on construction methods based on their team's expertise and experience. The submitter should also detail their approach for this coordination.

Submitters should describe their ability to perform the anticipated construction services for the Project. Identify what are considered to be project risks, and how the Submitter can assist in mitigating these risks.

The Submitter should include sufficient information to familiarize reviewers with their project approach and their ability to satisfy the technical and construction requirements, review of quantities, development of cost estimates including the GMP, and address the public's concerns related to schedule and access. As part of the Understanding of Service, the Submitter should provide a preliminary communications plan outlining their understanding of how communications between the CMGC and MDOT will occur

### **8.3.2 EXPERIENCE / PAST PERFORMANCE (20 POINTS)**

The Submitter shall provide the firms past experience on projects with similar scope and complexity. The Submitter should demonstrate how they completed the projects with success in the areas of schedule, safety, quality, cost and maintenance of traffic, including their role in the success of the projects. Describe what work is intended to be self-performed and what items will be bid to prequalified sub-contractors

If your organization has defaulted or failed to complete a project in the last five (5) years, please list each project this applies to and the reasons why for each.

### **8.3.3 WORK ZONE SAFETY (15 POINTS)**

The Submitter shall discuss and describe how work zone accidents can be minimized or mitigated. The Submitter should also provide information related to potential areas for contractor staging areas/yards and the access to and from the project.

### **8.3.4 SCHEDULE MANAGEMENT (15 POINTS)**

The Submitter shall provide information that will demonstrate how they could reduce and/or improve the overall construction schedule. MDOT's desire is to expedite the construction schedule while minimizing impacts to the traveling public while completing the work in an effective manner. Scoring will be greatest to those Submitters who provide a clear understanding and provide information on how they expect to meet these goals and demonstrate how their input during the design will be beneficial to MDOT's schedule goals.

### **8.3.5 QUALIFICATIONS OF KEY STAFF (20 POINTS)**

The Submitter shall list the team's key staff members and their qualifications, roles and responsibilities with projects of similar scope, schedule and complexity. The Submitters should clearly identify the roles of key staff during all phases of the project. The Submitter should demonstrate how communication will occur with internal staff, subcontractors, MDOT, MDOT's consultants, as well as their anticipated communication and involvement with the public. It is expected that CMGC staff that will be active during construction are also active during the project's preconstruction phase.

Name the key personnel and describe their role in the Project, experience on similar projects, and experience on other projects that successfully integrated construction and design activities.

Provide an organizational chart for the Project with names of key individuals each for the following:

- Pre-Construction Services (Prime and Subcontractors, if any)
- Construction Services (Prime and any known subcontractors. If Subcontractors are not known or identified, please describe the approach used to select Subcontractors)

Provide resumes for key personnel of the prime and any subcontractors shown on the organization charts. Resumes will not count toward the page limit of a SOQ

### **8.3.6 INNOVATIONS (15 POINTS)**

The Submitter shall list any potential innovations and innovative approaches to completing the project. At a minimum, innovations should specifically address how the Submitter expects to provide input into the design to improve the project and what can be done to expedite the schedule and limit impacts to traffic.

### **8.4 QUALITATIVE SCORE & SELECTION**

Selection will be based on the Submitter with the highest total combined score (100 possible points) if MDOT does not require an interview.

### **8.5 INTERVIEWS (30 points)**

An interview may be required if the scoring of the proposals is inadequate to clearly identify the most qualified Submitter. The interview will allow the Submitter the opportunity to present on the qualifications of their team, project approach or on other areas they feel will add value. MDOT will have the opportunity to ask Submitters general questions or questions that are specific to their proposal.

Interviews will be at the sole discretion of MDOT. If interviews are required, MDOT will notify no more than the three most qualified firms to set up an interview. MDOT may provide firms questions to be addressed at the interview. Interviews are limited to 60 minutes.

### **8.6 FINAL SCORE AND SELECTION**

If an interview is conducted the selection will be based on the Submitter with the highest combined total score (130 possible points).

### **8.7 DEBRIEFING**

Feedback may be provided via face to face meeting, phone or email at the discretion of the Project Manager, however, it will not be provided until after the award of the contract.



**Exhibit A: Conflict of Interest Statement.**

**CONFLICT OF INTEREST STATEMENT**

\_\_\_\_\_ (Prime Contractor Name) certifies that it has read and understands the following:

The PRIME CONTRACTOR, its team members, and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of the services under this Contract. "Affiliate" means a corporate entity connected to the PRIME CONTRACTOR through common ownership. "Team member" means any known entity the PRIME CONTRACTOR intends to be in a contractual relationship with to complete the work associated with the project. The PRIME CONTRACTOR, its team members, and its Affiliates agree not to provide any services to any entity that may have an adversarial interest in the project, for which it has provided services to the DEPARTMENT. The PRIME CONTRACTOR, its team members, and its Affiliates agree to disclose to the DEPARTMENT all other interests that the PRIME CONTRACTOR, its team members, or sub consultants have or contemplate having during each phase of the project. The phases of the project include, but are not limited to, planning, scoping, early preliminary engineering, design, and construction. In all situations, the DEPARTMENT will decide if a conflict of interest exists. If the PRIME CONTRACTOR, its team members, and its Affiliates choose to retain the interest constituting the conflict, the DEPARTMENT may terminate the Contract for cause in accordance with the provisions stated in the Contract.

- ☐ Certification for Subject Project: Based on the foregoing, the PRIME CONTRACTOR certifies that no conflict exists with the subject project for it, or any of its team members and/or Affiliates
- ☐ Disclose of Conflict with Subject Project: Based on the foregoing, the PRIME CONTRACTOR certifies that a potential conflict does or may exist with the subject project for it, and/or any of its team members and/or Affiliates. The attached sheets describe the potential conflict

This form, and any attachments, must be certified by a person from the PRIME CONTRACTOR who has contracting authority.

Certified by: Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit B: Forms: CMGC 001, CMGC 002, CMGC 003**

**CMGC-001      SUBMITTER INFORMATION**

**Project:** \_\_\_\_\_

**Name of Submitter:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Contract Person:** \_\_\_\_\_

**Telephone No.:** \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

**CMGC-002      STATEMENT OF QUALIFICATIONS CHECKLIST**

**Project:** \_\_\_\_\_

**Name of Submitter:** \_\_\_\_\_

- ☐ Qualitative Scoring Criteria
- ☐ CMGC-001 – Submitter Information\*\*
- ☐ CMGC-002– Statement of Qualifications Checklist\*\*
- ☐ CMGC-003 – Addenda Acknowledgment\*\*
- ☐ Financial Viability (Form 1300EZ)\*\*
- ☐ Conflict of Interest Statement (See Exhibit A)\*\*

**\*\*NOT INCLUDED IN SOQ MAXIMUM PAGE COUNT**

**CMGC-003      ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

**Project:** \_\_\_\_\_

**Name of Submitter:** \_\_\_\_\_

Receipt is hereby acknowledged of the following addenda by MDOT to this RFQ by entering "YES" or "NO" below and indicating the date received:

<b><u>Addendum No.</u></b>	<b><u>Received</u></b>	<b><u>Date Received:</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

## **Exhibit C**

CONTRACT NO. «CONTRNO»  
CONTROL SECTION:  
«CONTSECTION» JOB NO.  
«JOB» FED. PROJ. NO.  
«FEDPNO» ITEM NO. «ITEM»  
AGENDA: «AGENDA»

### **MICHIGAN DEPARTMENT OF TRANSPORTATION**

**«VENDOR»**

### **CONTRACT**

This Contract is made and entered into this date of \_\_\_\_\_ by and between the Michigan Department of Transportation (MDOT) and «VENDOR» (CONTRACTOR), of «ADDRESS», for the purpose of MDOT engaging the CONTRACTOR to provide professional Construction Manager/General Contracting services for «PROJECTDESC».

#### **Recitals:**

The PROJECT TEAM, as referenced herein, is composed of MDOT, the Design Consultant, the Independent Cost Estimator, the CONTRACTOR, the CONTRACTOR's subcontractors, the U.S. Coast Guard, and any additional project stakeholders; and

After the Phase 1 design plans are sufficiently developed (approximately 70 percent to 90 percent complete), the CONTRACTOR will prepare and submit to MDOT a Construction Services Cost Proposal that includes a Guaranteed Maximum Price (GMP) to complete the construction phase of the project; and

Phase 2 (construction) of the project will commence only if the parties successfully negotiate an acceptable Construction Services Cost Proposal, including the GMP, and enter into a separate construction contract for such Phase 2 construction services; in the event that the parties cannot agree upon an acceptable Construction Services Cost Proposal, including the GMP, MDOT reserves the right to proceed with the project utilizing other delivery methods; and

The services may be programmed with the use of federal funds administered by the United States Department of Transportation, Federal Highway Administration (FHWA).

The parties agree that:



THE CONTRACTOR WILL:

1. Perform the preconstruction work (Phase 1) set forth in Exhibit A, dated «EXDATE», pages 1 through «EXPGS», attached hereto and made a part hereof (SERVICES).

The CONTRACTOR will prepare and submit to MDOT a Construction Services Cost Proposal that includes a GMP. The Phase 2 (construction) of the project will commence only if the parties successfully negotiate an acceptable Construction Services Cost Proposal, including the GMP, and enter into a separate construction contract for such Phase 2 construction services. In the event the parties cannot agree upon a Construction Services Cost Proposal, including the GMP, MDOT reserves the right to terminate the Construction Manager/General Contractor services and proceed with the project utilizing other delivery methods.

2. Perform all SERVICES in conformity with MDOT's applicable standards and guidelines.
3. During the performance of the SERVICES herein defined, be responsible for any loss of or damage to original documents belonging to MDOT while they are in the CONTRACTOR's possession. Restoration of lost or damaged original documents will be at the CONTRACTOR's expense.
4. Make such trips to confer with representatives of MDOT and the United States Department of Transportation, Federal Highway Administration (FHWA), as may be necessary in the carrying out of the SERVICES set forth in this Contract.
5. Submit written progress reports to MDOT that outline the work accomplished during the reporting period; identify any problems, real or anticipated, associated with the conduct of the SERVICES; and identify any deviations from the agreed upon work plan.
6. Prepare the graphics and text for all reports in a form suitable and acceptable to MDOT, such suitability and acceptability to be determined by MDOT. This section is limited to the format of the graphics and text. Nothing herein is to be construed as allowing MDOT to declare as unsuitable or unacceptable any of the graphics or text because of the conclusions arrived at by the CONTRACTOR through analysis of data collected for this project.

As used throughout this Contract, the words "satisfactory" and "acceptance" are defined to mean that the product is in the format required and is completely in accordance with the Contract requirements; however, it does not mean that the conclusions arrived at for this project must be approved or agreed to by MDOT or the FHWA.



7. Prepare and submit to MDOT a written preliminary copy of the Final Project Report in accordance with the work plan set forth in Exhibit A for its review and acceptance prior to submission of the Final Project Report. MDOT will notify the CONTRACTOR of its acceptance or rejection of the Final Project Report within sixty (60) days of receipt of same from the CONTRACTOR.
8. Submit any proposed publication by the CONTRACTOR or its subcontractors of the results of project work for prior review and acceptance by MDOT. Such review and acceptance is for MDOT's own purposes and does not relieve the CONTRACTOR of any of its obligations and responsibilities for any claims arising out of such publication. Any such publication will include proper credit for all parties to this Contract.
9. Permit representatives of MDOT, the FHWA, and other authorized public agencies interested in the SERVICES to have full access to the SERVICES during the CONTRACTOR's performance.
10. With regard to audits and record-keeping:
  - a. The CONTRACTOR will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Contract (RECORDS). Separate accounts will be established and maintained by job number for all costs incurred under this Contract.
  - b. The CONTRACTOR will maintain the RECORDS for at least three (3) years from the date of final payment made by MDOT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONTRACTOR will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
  - c. MDOT or its representative may inspect, copy, scan, or audit the RECORDS at any reasonable time after giving reasonable notice.
  - d. If any part of the work is subcontracted, the CONTRACTOR will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
11. The CONTRACTOR will provide feedback regarding the design in accordance with the following:
  - a. The CONTRACTOR will not be expected to be the designer of record for the project, but is be expected to provide the PROJECT TEAM with construction expertise and technical experience to assist in project decision-making, ensure the technical challenges are addressed, and provide input on items affecting

construction costs, schedule, constructability and market conditions.

- b. The CONTRACTOR is not required to ascertain that the design plans and specifications reviewed during its performance of the SERVICES are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The CONTRACTOR shall promptly report to MDOT any nonconformity discovered by or made known to the CONTRACTOR as a request for information in such form as MDOT may require. The CONTRACTOR is required to develop the GMP based on work that will be performed in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.
  - c. The recommendations and advice of the CONTRACTOR concerning the design alternatives shall be subject to the review and approval of MDOT.
  - d. The CONTRACTOR will exercise reasonable care in preparing schedules and estimates. The CONTRACTOR, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.
12. The CONTRACTOR will provide insurance in the amounts and types set forth below, at a minimum, for the life of the Contract. The CONTRACTOR will submit certificates of insurance to MDOT before the award of the Contract, as requested by MDOT. The insurer must provide at least thirty (30) days written notice of cancellation or change to MDOT. The CONTRACTOR is responsible for verifying that its subcontractors are in compliance with MDOT's insurance requirements.

Required Limits		Additional
<b>Commercial General Liability Insurance</b>		
Minimal Limits: \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations		Consultants must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds
<b>Automobile Liability Insurance</b>		
Minimal Limits: \$1,000,000 Per Occurrence		
<b>Workers' Compensation Insurance</b>		
Minimal Limits: Coverage according to applicable laws governing work activities.		Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>		
Minimal Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease		

13. If MDOT discloses its confidential information to the CONTRACTOR, the CONTRACTOR will maintain such information as confidential. Information provided by MDOT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:

- a. Information for which MDOT gives prior written permission for publication or use.
- b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of this Contract, and MDOT may terminate this Contract under the provisions of Section 24(b).

News releases pertaining to this Contract or the SERVICES to which it relates will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. News releases made without MDOT's approval will be considered a breach of the Contract, and MDOT may terminate this Contract under the provisions of Section 24(b).

14. Submit billings to MDOT for the SERVICES performed in accordance with the following:

- a. Billings for SERVICES will be on a milestone basis and will be made in accordance with the milestone schedule set forth in Exhibit A. Each billing for milestone payment will only occur upon acceptance of all work detailed in the milestone schedule for the specific milestone.
- b. Notwithstanding any other provision in this Contract to the contrary, the CONTRACTOR's milestone payment applications will be supported solely by proof of acknowledgement by MDOT that a particular milestone was accepted. Proof of actual costs incurred will not be required of the CONTRACTOR in support of any pay application under Section 14 or notice of audit under Section 22 as the milestones in Exhibit A have been agreed upon as lump sum compensation milestones.
- c. The CONTRACTOR agrees that the costs reported to MDOT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CONTRACTOR also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.
- d. The final billing for the SERVICES must be received within sixty (60) days of completion of the SERVICES. MDOT may close the Contract after the sixty (60) days have passed. Costs provided to MDOT after this sixty (60) day period may be denied by MDOT.

- e. All billings for SERVICES provided prior to September 30 of any year must be received by MDOT in accordance with MDOT's annual fiscal year end instructions or a significant delay in payment may occur.

MDOT WILL:

- 15. Provide the CONTRACTOR with access to MDOT standards and information in its possession and related to the SERVICES that the CONTRACTOR specifically requests, except for such standards and information as the CONTRACTOR is specifically required to provide.
- 16. Pay the CONTRACTOR for the SERVICES after receipt of billings and in accordance with the provisions of Section 17 below, subject to verification of progress. Compensation for the SERVICES will be on a milestone basis, with lump sum payments to be made upon the accomplishment of defined milestones, as set forth in Exhibit A, and will not exceed «MAXAMT», as set forth in Exhibit A. The CONTRACTOR will be responsible for all costs in excess of MDOT and FHWA funds shown above.

MDOT funds in this Contract made available through legislative appropriations are based on projected revenue estimates. MDOT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.

- 17. Determine that payment for the costs of the SERVICES required and performed is in accordance with the following:
  - a. Milestone payments will be made upon acceptance of all work detailed in the milestone descriptions set forth in Exhibit A.
  - b. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
- 18. Make payment to the CONTRACTOR after receipt of a billing, in accordance with the following:
  - a. Within thirty (30) days of receipt of the billing from the CONTRACTOR, MDOT will either approve the billing for payment or, in lieu of such approval, will inform the CONTRACTOR that such approval has not been given. Additionally, MDOT will inform the CONTRACTOR why the billing has not been approved and the actions, if any, required of the CONTRACTOR to obtain such approval. Upon approval by the Project Manager, the billing will be submitted for payment. This subsequent payment process requires up to an additional thirty (30) days.

- b. In the event MDOT determines that the CONTRACTOR is not currently eligible to receive any or all of the funds requested, it will promptly notify the CONTRACTOR, stating the reason for such determination.
- c. Upon receipt by MDOT of the required documents and any other accompanying information in a form satisfactory to MDOT, MDOT will process the payment request if the CONTRACTOR is complying with its obligations pursuant to the Contract. Reimbursement of any costs pursuant to this section will not constitute a final determination by MDOT of the allowability of such costs and will not constitute a waiver by MDOT of any violation of the terms of this Contract committed by the CONTRACTOR.
- d. Regardless of its costs, the CONTRACTOR will not be entitled to compensation in excess of the maximum amount(s) set forth in Section 16 hereof.
- e. The CONTRACTOR will not be paid for costs arising from the correction of errors and omissions attributable to the CONTRACTOR.

IT IS FURTHER AGREED THAT:

- 19. The parties will consider the SERVICES to be complete when accepted by MDOT. Such acceptance by MDOT is not intended to nor does it relieve the CONTRACTOR of any of its obligations and responsibilities herein.
- 20. Any change in the scope, character, or term of this Contract or in the maximum amount as shown in Section 16 of this Contract will only be by award of a prior written amendment to this Contract by the parties.
- 21. When delays are caused by circumstances or conditions beyond the control of the CONTRACTOR, as determined by MDOT, the CONTRACTOR may be granted an extension of time, as set forth in Section 47. Such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
- 22. In the event that an audit performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the CONTRACTOR a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CONTRACTOR at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CONTRACTOR will (a) respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any

disagreement as to a disallowed item of expense, and (c) submit to MDOT a written explanation as to any questioned or no opinion expressed item of expense (RESPONSE). The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CONTRACTOR may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract. The CONTRACTOR agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to finally disallow any items of questioned or no opinion expressed cost.

MDOT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If MDOT determines that an overpayment has been made to the CONTRACTOR, the CONTRACTOR will repay that amount to MDOT or reach agreement with MDOT on a repayment schedule within thirty (30) days after the date of an invoice from MDOT. If the CONTRACTOR fails to repay the overpayment or reach agreement with MDOT on a repayment schedule within the thirty (30) day period, the CONTRACTOR agrees that MDOT will deduct all or a portion of the overpayment from any funds then or thereafter payable by MDOT to the CONTRACTOR under this Contract or any other agreement or payable to the CONTRACTOR under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by MDOT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CONTRACTOR expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest MDOT's decision only as to any item of expense the disallowance of which was disputed by the CONTRACTOR in a timely filed RESPONSE.

23. MDOT and the CONTRACTOR will agree on the Key People to be assigned to the Project Team prior to any work being performed. The CONTRACTOR will not replace any Key People assigned to the Project Team without prior written approval from MDOT. MDOT has the right to disapprove proposed replacements, and the CONTRACTOR is required to find alternative replacements that are acceptable to MDOT. The replacement of Key People from the Project Team without MDOT's prior written approval will be considered a breach of the Contract, and MDOT may terminate this Contract under the termination provisions of Section 24(b). If a member of the Project Team who is one of the Key People leaves the Project Team, the CONTRACTOR will replace that person with a person who is acceptable to MDOT in accordance with the MDOT "Consultant Loss of Key Staff Notification Process," dated February 9, 2015. Failure by the CONTRACTOR to find an

acceptable replacement to the Project Team will be considered a breach of this Contract, and MDOT may terminate this Contract under the termination provisions of Section 24(b). "Key People" are defined as those people whose qualifications and experience are essential to providing quality SERVICES. "Project Team" means the personnel assigned by the CONTRACTOR and the subcontractor(s) who are responsible for the completion of the SERVICES.

24. MDOT may terminate this Contract for convenience or cause, as set forth below, before the SERVICES are completed. Written notice of termination will be sent to the CONTRACTOR. The CONTRACTOR will be reimbursed in accordance with the following:

**a. Termination for Convenience:**

If MDOT terminates this Contract for convenience, the CONTRACTOR will be reimbursed for all milestones achieved for which MDOT receives the completed work product. MDOT will pay the CONTRACTOR a proportionate share for the partially completed work product of a partially completed milestone. The value of such partially completed work product will be determined by MDOT based on the actual costs incurred. In no case will the compensation paid to the CONTRACTOR for partial completion of SERVICES exceed the amount the CONTRACTOR would have received had the SERVICES been completed.

**b. Termination for Cause:**

In the event the CONTRACTOR fails to complete any of the SERVICES in a manner satisfactory to MDOT, and/or discloses MDOT's confidential information, in violation of the provisions of Section 13, and/or replaces any Key People without prior written approval from MDOT, as set forth in Section 23, and/or fails to find an acceptable replacement to the Project Team, as set forth in Section 23, and/or makes any public relations communications and/or products that are intended for an external audience without prior written approval from MDOT, as set forth in Section 45, MDOT may terminate this Contract for cause. Written notice of termination will be sent to the CONTRACTOR. The CONTRACTOR will be reimbursed as follows:

The CONTRACTOR will be reimbursed for all milestone achieved for which MDOT receives the completed work product. MDOT will not reimburse the CONTRACTOR for any partially completed milestone(s).

In the event that termination by MDOT is necessitated by any wrongful breach, failure, default, or omission by the CONTRACTOR, MDOT will be entitled to pursue whatever remedy is available to it, including, but not limited to, withholding funds or off-setting against funds owed to the CONTRACTOR under this Contract,

as well as any other existing or future contracts between the CONTRACTOR and MDOT, for any and all damages and costs incurred or sustained by MDOT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CONTRACTOR. In the event of termination of this Contract, MDOT may procure the professional SERVICES from other sources and hold the CONTRACTOR responsible for any damages or excess costs occasioned thereby.

25. All documents prepared by the CONTRACTOR under this Contract are the property of MDOT and cannot be furnished to any party without the permission of MDOT, except to the involved governmental agencies and commissions as part of the progress reporting process and except as provided in and limited in Section 34 herein.
26. This Contract is personal to the parties and cannot be assigned. The CONTRACTOR will not sublet any portion of the SERVICES without MDOT's approval of the CONTRACTOR's Intent to Subcontract form, and subcontractor work may not begin until the subcontract is signed or, in specific situations, a Limited Notice to Proceed form is signed. The CONTRACTOR will not sublet more than sixty percent (60%) of the SERVICES by dollar amount.

Such approval of any Intent to Subcontract form is given solely for the purposes of MDOT. Approval does not constitute an assumption of liability, a waiver, or an estoppel to enforce any of the requirements of this Contract, nor will any such approval by MDOT be construed as a warranty of the third party's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity. The Intent to Subcontract form does not replace the traditional subcontract or subcontract amendment between the CONTRACTOR and its subcontractor. MDOT or its representative may inspect, copy, scan, or audit the traditional subcontract records at any reasonable time after giving reasonable notice.

Any subconsultant will not sublet more than fifty percent (50%) of its subcontracted SERVICES by dollar amount. This provision will be included in all subcontracts relating to this Contract.

The following named subcontractor(s), as set forth in Exhibit A, will perform portions of the SERVICES:

«SUBS»

27. The CONTRACTOR agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the CONTRACTOR receives from MDOT. This requirement is also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.



This prompt payment provision is a requirement of 49 CFR Part 26, as amended, and does not confer third-party beneficiary right or other direct right to a subcontractor against MDOT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The CONTRACTOR further agrees that it will comply with 49 CFR Part 26, as amended, and will report any and all DBE subcontractor payments to MDOT semi-annually in the format set forth in Appendix G, dated September 2015, attached hereto and made a part hereof, or any other format acceptable to MDOT.

28. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and the satisfactory and acceptable fulfillment of the terms of this Contract will be decided by MDOT.
29. With regard to non-discrimination and DBE requirements:
  - a. In connection with the performance of SERVICES under this Contract, the CONTRACTOR (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
  - b. During the performance of this Contract, the CONTRACTOR, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix B, dated June 2011, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
  - c. The CONTRACTOR will carry out the applicable requirements of MDOT's DBE program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, dated October 1, 2005, attached hereto and made a part hereof.
30. Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). The UNIVERSITY is required to register to receive payments by EFT at SIGMA Vendor Self Service (VSS) website ([www.michigan.gov/SIGMAVSS](http://www.michigan.gov/SIGMAVSS)).
31. The CONTRACTOR specifically agrees that in the performance of the SERVICES herein enumerated, by itself, or by an approved subcontractor, or by anyone acting on its behalf,

it will comply with any and all state, federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of this Contract.

32. The CONTRACTOR warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONTRACTOR to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, MDOT will have the right to annul this Contract without liability or, at its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
33. If MDOT does not wish to subscribe to the findings or conclusions of the SERVICES, the following statement will be added to the credit line of all reports published by the CONTRACTOR or by MDOT:

*"The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Michigan State Transportation Commission or the Michigan Department of Transportation or the Federal Highway Administration."*
34. It is agreed that the CONTRACTOR will not copyright any papers, reports, forms, or other materials that are part of its work under this Contract without the prior written approval of MDOT.
35. In addition to the protection afforded by any policy of insurance, the CONTRACTOR agrees to indemnify, defend, and save harmless the State of Michigan, the Michigan State Transportation Commission, MDOT, the FHWA, and all officers, agents, and employees thereof:
  - a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the CONTRACTOR in connection with the CONTRACTOR's performance of the SERVICES; and
  - b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, and response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the CONTRACTOR's performance of the SERVICES under this Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

MDOT will not be subject to any obligations or liabilities by contractors of the CONTRACTOR or their subcontractors or any other person not a party to this Contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CONTRACTOR will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the Michigan State Transportation Commission, MDOT, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of this Contract, thereby giving the State of Michigan, the Michigan State Transportation Commission, MDOT, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

36. In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the CONTRACTOR, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employers who have been found in contempt of court by a federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. MDOT may void this Contract if the name of the CONTRACTOR or the name of a subcontractor, manufacturer, or supplier utilized by the CONTRACTOR in the performance of this Contract subsequently appears in the register during the performance of this Contract.
37. The CONTRACTOR's signature on this Contract constitutes the CONTRACTOR's certification that to the best of his or her knowledge and belief no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

The CONTRACTOR will require that the language of this certification be included in the award documents for all third-party agreements (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

38. The CONTRACTOR's signature on this Contract constitutes the CONTRACTOR's certification of "status" under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549.

The certification that is included as a part of this Contract as Attachment A is Appendix A of 49 CFR Part 29 and applies to the CONTRACTOR (referred to in Appendix A as "the prospective primary participant").

The CONTRACTOR is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

*"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States with respect to 49 CFR Part 29, as amended and as relocated to 2 CFR Part 1200, pursuant to Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29."*

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the CONTRACTOR enters into written arrangements for the procurement of goods and services provided for in this Contract.

39. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
- a. The CONTRACTOR stipulates that any facility to be utilized in the performance of this Contract, unless such Contract is exempt under the Clean Air Act, as amended (42 USC 7401 *et seq.*, as amended, including Pub. L. 101-549), and under the Clean Water Act, as amended (33 USC 1251 *et seq.*, as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of Contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
  - b. The CONTRACTOR agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the CONTRACTOR and the SERVICES under this Contract.

- c. The CONTRACTOR will promptly notify MDOT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
  - d. The CONTRACTOR agrees to include or cause to be included the requirements of the preceding three (3) paragraphs, (a), (b), and (c), in every nonexempt subcontract.
40. The CONTRACTOR agrees that no otherwise qualified individuals with disabilities in the United States, as defined in the Americans with Disabilities Act, 42 USC 12101 *et seq.*, as amended, and regulations in implementation thereof (29 CFR Part 1630), will, solely by reason of their disabilities, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Contract.
41. The CONTRACTOR agrees that it will not volunteer, offer, or sell its services to any litigant against MDOT with respect to any SERVICES it has agreed to perform for MDOT under this Contract, provided that this provision will not apply either when the CONTRACTOR is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the CONTRACTOR to be in violation of any Michigan or federal law.
42. Any approvals, acceptances, reviews, and inspections of any nature by MDOT will not be construed as a warranty or assumption of liability on the part of MDOT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of MDOT, which is acting in a governmental capacity under this Contract, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the SERVICES under this Contract.
- Any such approvals, acceptances, reviews, and inspections by MDOT will not relieve the CONTRACTOR of its obligations hereunder, nor are such approvals, acceptances, reviews, and inspections by MDOT to be construed as a warranty as to the propriety of the CONTRACTOR's performance but are undertaken for the sole use and information of MDOT.
43. With regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract, the CONTRACTOR hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT.

The CONTRACTOR shall require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

The CONTRACTOR shall notify MDOT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract may have occurred or is threatened to occur. The CONTRACTOR shall also notify MDOT if it becomes aware of any person's intent to commence, or of commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CONTRACTOR's obligation to MDOT under this Contract.

44. The CONTRACTOR and its Affiliates agree not to have any public or private interest, and shall not acquire directly or indirectly any such interest in connection with the project, that would conflict or appear to conflict in any manner with the performance of the SERVICES under this Contract. "Affiliate" means a corporate entity linked to the CONTRACTOR through common ownership. The CONTRACTOR and its Affiliates agree not to provide any services to a construction contractor or any entity that may have an adversarial interest in a project for which it has provided services to MDOT. The CONTRACTOR and its Affiliates agree to disclose to MDOT all other interests that the prime or sub consultants have or contemplate having during each phase of the project. The phases of the project include, but are not limited to, planning, scoping, early preliminary engineering, design, and construction. In all situations, MDOT will decide if a conflict of interest exists. If MDOT concludes that a conflict of interest exists, it will inform the CONTRACTOR and its Affiliates. If the CONTRACTOR and its Affiliates choose to retain the interest constituting the conflict, MDOT may terminate the Contract for cause in accordance with the provisions stated in this Contract.
45. Any public relations communications and/or products pertaining to this Contract or the SERVICES hereunder that are intended for an external audience will not be made without prior written approval from MDOT, and then only in accordance with explicit instructions from MDOT. Examples of public relations communications and/or products may include the following:
  - a. Use of the MDOT logo;
  - b. Brochures, flyers, invitations, programs, or any other printed materials intended for an external audience;
  - c. Postings on social media sites or Web sites;

- d. New or updated video, digital versatile disk (DVD), or video sharing productions;
- e. Exhibits or presentations.

A violation of this provision constitutes a breach of this Contract and the prequalification rules, and MDOT may terminate this Contract under the provisions of Section 24(b).

- 46. This Contract will be in effect from the date of award through «ENDCON». Costs incurred outside of the term of this Contract will not be eligible for reimbursement.
- 47. Prior to expiration, the time for completion of performance under this Contract may be extended by MDOT upon written request and justification from the CONTRACTOR. Upon approval and authorization by MDOT, a written time extension amendment will be prepared and issued by MDOT. Any such extension will not operate as a waiver by MDOT of any of its rights herein set forth.
- 48. In case of any discrepancies between the body of this Contract and any exhibits hereto, the body of this Contract will govern.

SAMPLE

49. This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CONTRACTOR and of MDOT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CONTRACTOR, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

«VENDOR»

By: \_\_\_\_\_  
Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Title: Department Director

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